

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Martin Richard Layley, et al

Examiner: Tran, Tuan A.

Serial No.: 10/663,035

Group Art Unit: 2618

Filed: September 15, 2003

Docket: 678-1257 (P11364)

Dated: March 19, 2007

For: **A WIRELESS COMMUNICATION DEVICE AND A
METHOD FOR CONTROLLING THE SAME**

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313

TRANSMITTAL OF APPELLANT'S BRIEF ON APPEAL

Sir:

Enclosed please find APPELLANT'S BRIEF.

Also enclosed is a check in the amount of \$500.00 to cover the appeal fee.

If the enclosed check is insufficient for any reason or becomes detached, please charge the required fee under 37 C.F.R. §1.17 to Deposit Account No. 50-4053. Also, in the event any additional extensions of time are required, please treat this paper as a petition to extend the time as required and charge Deposit Account No. 50-4053. TWO COPIES OF THIS SHEET ARE ENCLOSED.

Respectfully submitted,

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Dated: March 19, 2007

Emmanuel Coffy



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
BOARD OF PATENT APPEALS AND INTERFERENCES

APPLICANTS: Martin Richard Layley, et al. **GROUP ART UNIT:** 2618
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APPEAL BRIEF (37 C.F.R. 41.37)

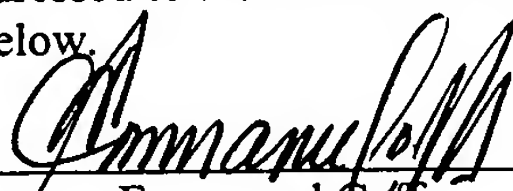
Sir:

This brief is in furtherance of the Notice of Appeal, filed in this case on January 16, 2007,
and received at the USPTO on January 19, 2007.

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Dated: March 19, 2007


Emmanuel Coffy

REAL PARTY IN INTEREST

The real party in interest is Samsung Electronics Co. Ltd., the assignee of the subject application, having an office at 416, Maetan-dong, Yeongtong-gu, Suwon-si, Gyeonggi-do, Republic of Korea.

RELATED APPEALS AND INTERFERENCES

To the best of Appellant's knowledge and belief, there are no currently pending related appeals, interferences or judicial proceedings.

STATUS OF CLAIMS

A. TOTAL NUMBER OF CLAIMS IN APPLICATION

Claims in the application are: 1-26.

B. STATUS OF ALL THE CLAIMS IN APPLICATION

1. Claims cancelled: 2, 7 and 23.
2. Claims withdrawn from consideration but not cancelled: none
3. Claims pending: 1, 3-6, 8-22 and 24-26.
4. Claims allowed: none
5. Claims rejected: 1, 3-6, 8-22 and 24-26.
6. Claims objected to: none.

C. CLAIMS ON APPEAL

The claims on appeal are: 1, 3-6, 8-22 and 24-26.

STATUS OF AMENDMENTS

On March 14, 2005, the Examiner issued the First Office Action on the Merits (FOAM). Subsequently, an amendment was filed on June 14, 2005. Claims 2, 7 and 23 were cancelled. Independent Claims 1 and 6 were amended to obviate the Examiner's rejections and to further distinguish the invention from the references of record. The Examiner issued a second Office Action on October 6, 2005. The amendments were largely disregarded; the arguments were refuted as not persuasive and the same rejection was reasserted. In response to that Office Action, on January 6, 2006 a reply was filed. Arguments distinguishing the invention from the references of record were presented and independent Claims 1 and 6 were once again amended to further distinguish the invention from the references of record. In response to the Appellant's reply an Advisory Action was issued on February 3, 2006, stating that the claim amendments could not be entered. An RCE was subsequently filed, on February 6, 2006 requesting reconsideration of the application and entry of the claim amendments filed in the January 6, 2006 reply. On February 27, 2006, the Examiner issued an Office Action with new grounds of rejection. In response to that Office Action, on May 26, 2006 a reply was filed. Arguments distinguishing the invention from the references of record were presented. The Examiner then issued a Final Office Action refuting the arguments presented as non-persuasive. A reply to the Final Office Action was filed on November 16, 2006. Arguments distinguishing the invention from the references of record were presented and independent Claims 1 and 6 were once more amended to further distinguish the invention from the references of record. An Advisory Action was issued by the Examiner entering the claim amendments of the November 16, 2006, which led to this Appeal.

SUMMARY OF CLAIMED SUBJECT MATTER

This invention provides a wireless communication device and a method for controlling the same in order to potentially utilize a peripheral device. A wireless communication device is defined as any device capable of communicating with any other device over a wireless medium, and is by no means limited to devices whose main purpose is communication. Any type of peripheral device that can communicate over a local wireless network and is intended as a destination for data sent from a data source may be used in the present invention. Examples of such devices are printers, fax machines, photocopiers, backup systems such as disks and tapes, computing devices such as personal computers and laptop computers, mobile phones, audio visual equipment, security systems including burglar alarms, any type of transport such as cars, buses, trains, planes etc., display monitors, satellite systems, environmental control systems, garage door systems, household appliances, entertainment systems, teaching aids and disabled persons aids.

A large number of wireless communication devices are available for consumers, for example, mobile telephones, personal digital assistants (PDAs), digital cameras, keyboards, computer mice, security devices, and the like. Even car keys and household appliances may be equipped with wireless communication devices able to communicate with other devices. In each of these devices, there is a requirement to set up communication channels to transfer data between such devices and peripheral devices, e.g. printers, backup devices, data sources and data targets.

For example, a mobile telephone receives incoming text messages via the Short Message Service (SMS) of Global System for Mobile Communication (GSM). The user may wish to print such messages to keep a permanent record.

Data held on wireless communication devices may be in forms other than SMS messages, for example, calendar entries, emails, data files or streams of communication data. SMS messages, calendar entries and emails may require a printing device to provide hard copies of the data, whereas it may also be a requirement to initiate a backup of data in which case disk drives and associated backup devices will be required as the peripheral device. Also, it may merely be a requirement that the device can communicate with a separate peripheral device, for example car keys and household appliances to communicate with a car's security system and timing

devices, respectively.

Any data transfer between a wireless communication device and a peripheral device will involve establishing a communications link between the two devices.

Many wireless systems today allow users to use local wireless networks to share peripheral devices connected to the network, for example using Bluetooth® technology.

Due to the flexibility of local wireless networks and the fluidity of devices entering and leaving the network, routes can become unstable. Due to this fluidity, it is a requirement that systems must determine what devices are attached to the network, and determine what the route is through the network to these devices, at periodic intervals.

The present invention finds a fine balance between using battery power constantly in order to locate peripheral devices that are available for use, and waiting a long time for a connection to a peripheral device to be made at the time when the user requests the peripheral device to be utilized.

A. CLAIM 1 – INDEPENDENT

Claim 1 is directed to a wireless communication device. The wireless communication device includes a search means; a control means; and a detection means, wherein the search means searches for a peripheral device when the detection means detects that the peripheral device is likely to be utilized by the wireless communication device before a user request, and the control means determines whether the peripheral device is likely to be utilized, sets a flag when it is determined, as a result of a search, that the peripheral device is available, and thereafter awaits a user's selection of a command corresponding to the set flag.

The above apparatus is described in the Specification at page 1, line 11- page 2, line 28; page 3, lines 12-15 and page 9, line 27-page 10, line 12.

B. CLAIM 6 – INDEPENDENT

Claim 6 is directed to a method of controlling a wireless communication device. The method includes searching for a peripheral device upon detection that the peripheral device is likely to be utilized by the wireless communication device, before a user request; setting a flag according to availability of the peripheral device; and awaiting a user's selection of a command corresponding to the set flag.

The above method determines if a peripheral device may be utilized in the near future by a wireless communication device. For example, reception of a new SMS message by a mobile telephone may mean that the mobile telephone (the wireless communication device) may utilize a printer (the peripheral device) in the near future to print the SMS message. If a peripheral device may be required, a search is carried out for a local wireless network. The SMS message does not have to be a new message received by the mobile telephone for the search for a printer to be initiated. For example, a search may be initiated if any message is stored within the "in" or "out" box of the mobile telephone system and the message editor is accessed by the user. Also, due to the numerous features available on mobile telephones and PDAs this invention also relates to accessing or receiving new, or storing old data such as calendar and reminder entries or any other data entry within these devices.

The above method is described in the Specification at page 4, line 11-16; page 10, line 13-line 22.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

A. GROUND OF REJECTION 1 (Claims 1, 3-5, 11, 13-14, 16, 18 and 20)

Claims 1, 3-5, 11, 13-14, 16, 18 and 20 stand rejected under 35 U.S.C. §102(e) as being anticipated by Struble (U.S. Patent No. 6,745,253).

B. GROUND OF REJECTION 2 (Claims 6, 8-10, 12, 15, 17, 19, 21-22 and 24-26)

Claims 6, 8-10, 12, 15, 17, 19, 21-22 and 24-26 stand rejected under 35 U.S.C. §102(e) as being anticipated by Struble (U.S. Patent No. 6,745,253).

ARGUMENT

A. GROUND OF REJECTION 1 (Claims 1, 3-5, 11, 13-14, 16, 18 and 20)

A.1. Claim 1

Appellant initially shows error in the rejection of Claim 1 in that the Examiner misconstrues the teachings of the cited reference Struble. More specifically, the Examiner states that Struble teaches the recitation of “wherein the search means searches for a peripheral device when the detection means detects that the peripheral device is likely to be utilized by the wireless communication device before a user request,” as recited in Claim 1. Appellant urges to the contrary.

Referring to Fig.1 of the present application, the device, i.e. the piconet of Fig. 3, which embodies the search method of the present application, determines if a peripheral device may be utilized in the near future. For example, reception of a new SMS message by a mobile telephone may mean that the mobile telephone (the wireless communication device) may utilize a printer (the peripheral device) in the near future to print the SMS message.

If a peripheral device may be required, the controller of the wireless device searches for a local wireless network, as shown in step S123 of Fig. 1. If a local wireless network is available at step S125, a search for a peripheral device on the network is carried out in step S127, otherwise the process returns to step S121. If a peripheral device is available in step S129, a "peripheral device available" flag is set by the controller, as shown in step S131.

Struble as cited by the Examiner, discloses a system and method with which a user can locate and determine the functional capabilities of the peripheral devices so that the person can determine whether or not to use the peripheral devices (e.g., see, Column 1, Lines 43-46). This is similar to the method disclosed in the background section of the disclosure of the present invention (e.g., see, the paragraph beginning at Line 21, of Page 2 of the present application). Regarding the operational flow of Struble, with reference to FIGs. 3A and 3B, Struble teaches a user's preferences are received, a transmission to peripheral devices is initiated and thereafter the capability of the peripheral devices are displayed and the user's data transmission command is awaited for and received (e.g., see, Steps 302, 308, 316, 318, and 320, respectively, and similar steps in FIGs. 5 and 6). In other words, Struble merely teaches matching device capabilities with user preferences. However, Struble does not mention when the flowcharts shown in FIGs. 3 and

5-6 are begun nor does Struble disclose flags and commands corresponding to a set flag.

In contrast, Claim 1 includes the recitations of wherein the search means searches for a peripheral device when the detection means detects that the peripheral device is likely to be utilized by the wireless communication device before a user request, setting a flag according to the availability of the peripheral device, and awaiting a user's selection of a command corresponding to a set flag, as recited in Claim 1.

Still further, with reference to step 310 of FIG. 3A, Struble discloses a determination step which determines whether "SUITABLE DEVICE(S) ARE IN RANGE?" Moreover with respect to the corresponding text of Struble, i.e., Column 4, Lines 34-54, Struble teaches "decision element 310." Struble does not provide any other information as to operative steps performed in Step 310.

In contrast, Claim 1 includes the limitation of wherein the control means determines whether the peripheral device is likely to be utilized, sets a flag when it is determined, as a result of a search, that the peripheral device is available, and thereafter awaits a user's selection of a command corresponding to the set flag, which is neither taught nor suggested by Struble.

Accordingly, Struble does not teach or suggest each and every limitation of amended Claim 1. Appellant has thus shown that there are missing claimed features not taught or, suggested by the cited reference, and thus Claim 1 has been erroneously rejected under 35 U.S.C. §102(e). The Examiner has not established a prima facie showing of anticipation¹.

A.2. Claim 3

Appellant shows error in the rejection of Claim 3 for the reasons given above with respect to Claim 1 upon which Claim 3 depends.

A.3. Claim 4

Appellant shows error in the rejection of Claim 4 for the reasons given above with respect to Claim 1 upon which Claim 4 depends.

¹ As recited in MPEP 706.02(IV), "for anticipation under 35 U.S.C. 102, the reference must teach every aspect of the claimed invention either explicitly or impliedly."

A.4. Claim 5

Appellant shows error in the rejection of Claim 5 for the reasons given above with respect to Claim 1 upon which Claim 5 depends.

A.5. Claim 11

Appellant shows error in the rejection of Claim 11 for the reasons given above with respect to Claim 1 upon which Claim 11 depends.

A.6. Claim 13

Appellant shows error in the rejection of Claim 13 for the reasons given above with respect to Claim 1 upon which Claim 13 depends.

A.7. Claim 14

Appellant shows error in the rejection of Claim 14 for the reasons given above with respect to Claim 1 upon which Claim 14 depends.

A.8. Claim 16

Appellant shows error in the rejection of Claim 16 for the reasons given above with respect to Claim 1 upon which Claim 16 depends.

A.9. Claim 18

Appellant shows error in the rejection of Claim 18 for the reasons given above with respect to Claim 1 upon which Claim 18 depends.

A.10. Claim 20

Appellant shows error in the rejection of Claim 20 for the reasons given above with respect to Claim 1 upon which Claim 20 depends.

B. GROUND OF REJECTION 2 (Claims 6, 8-10, 12, 15, 17, 19, 21-22 and 24-26)

B.1. Claim 6

Appellant initially shows error in the rejection of Claim 6 for the reasons given above with respect to Claim 1. Claim 6 includes similar recitations, in method form, as those contained in Claim 1.

Further, the present application, as defined by the claims, is drawn to an apparatus and method for controlling ad-hoc network connections of a wireless communication device with peripheral devices while lowering power consumption. Unlike prior art devices, which constantly scan for available peripherals (and waste valuable system resources doing so), the inventive method, as defined by Claim 6 of the present application, determines when it is likely that the user will want to use a peripheral device for a specific function upon the occurrence of an event and searches for peripheral devices based on the determination. For example, when a mobile telephone receives an SMS message, the user may want to print it, so the mobile phone looks for, and connects to, a printer in anticipation of the user's possible need to print. Furthermore, according to the present application, as defined by the Claims, a digital camera will find and connect to a printer upon taking a picture, in anticipation of the user wanting to print the picture. Thus, according to the present application, power consumption and the time necessary to initiate a network connection is reduced.

Struble discloses a system and method with which a user can locate and determine the functional capabilities of the peripheral devices so that the person can determine whether or not to use the peripheral devices (e.g., see, Column 1, Lines 43-46). This is similar to the method disclosed in the background section (prior art) of the disclosure of the present invention (e.g., see, the Paragraph beginning at Line 21, of Page 2 of the present application). Regarding the operational flow of Struble, with reference to FIGs. 3A and 3B, Struble teaches a user's preferences are received, a transmission to peripheral devices is initiated and thereafter the capability of the peripheral devices are displayed and the user's data transmission command is awaited for and received (e.g., see, Steps 302, 308, 316, 318, and 320, respectively, and similar steps in FIGs. 5 and 6). In other words, Struble merely teaches matching device capabilities with user preferences. However, Struble does not mention when the flowcharts shown in FIGs. 3 and 5-6 are begun nor does Struble disclose flags and commands corresponding to a set flag.

In contrast, Claim 6 includes the limitations of “searching for a peripheral device upon detection that the peripheral device is likely to be utilized by the wireless communication device, before a user request; setting a flag according to availability of the peripheral device; and awaiting a user’s selection of a command corresponding to the set flag,” which are neither taught nor suggested by Struble.

Accordingly, Struble does not teach or suggest each and every limitation of Claim 6. Appellant has thus shown that there are missing claimed features not taught or, suggested by the cited reference, and thus Claim 6 has been erroneously rejected under 35 U.S.C. §102(e). The Examiner failed to establish a prima facie showing of anticipation².

B.2. Claim 8

Appellant shows error in the rejection of Claim 8 for the reasons given above with respect to Claim 6 upon which Claim 8 depends.

B.2. Claim 9

Appellant shows error in the rejection of Claim 9 for the reasons given above with respect to Claim 6 upon which Claim 9 depends.

B.2. Claim 10

Appellant shows error in the rejection of Claim 10 for the reasons given above with respect to Claim 6 upon which Claim 10 depends.

B.2. Claim 12

Appellant shows error in the rejection of Claim 12 for the reasons given above with respect to Claim 6 upon which Claim 12 depends.

B.2. Claim 15

² As recited in MPEP 2131.03(III) “[A]nticipation under § 102 can be found only when the reference discloses exactly what is claimed and that where there are differences between the reference disclosure and the claim, the rejection must be based on § 103 which takes differences into account.” *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 227 USPQ 773 (Fed. Cir. 1985)

Appellant shows error in the rejection of Claim 15 for the reasons given above with respect to Claim 6 upon which Claim 15 depends.

B.2. Claim 17

Appellant shows error in the rejection of Claim 17 for the reasons given above with respect to Claim 6 upon which Claim 17 depends.

B.2. Claim 19

Appellant shows error in the rejection of Claim 19 for the reasons given above with respect to Claim 6 upon which Claim 19 depends.

B.2. Claim 21

Appellant shows error in the rejection of Claim 21 for the reasons given above with respect to Claim 6 upon which Claim 21 depends.

B.2. Claim 22

Appellant shows error in the rejection of Claim 22 for the reasons given above with respect to Claim 6 upon which Claim 22 depends.

B.2. Claim 24

Appellant shows error in the rejection of Claim 24 for the reasons given above with respect to Claim 6 upon which Claim 24 depends.

B.2. Claim 25

Appellant shows error in the rejection of Claim 25 for the reasons given above with respect to Claim 6 upon which Claim 25 depends.

B.2. Claim 26

Appellant shows error in the rejection of Claim 26 for the reasons given above with respect to Claim 6 upon which Claim 26 depends.

CONCLUSION

Appellants have shown multiple errors in the Examiner's final rejection of the claims in the present case. Therefore, based on at least the foregoing, and as the Examiner has failed to make out a prima facie case for an anticipation rejection, the rejection of Claims 1, 3-6, 8-22 and 24-26 must be reversed.

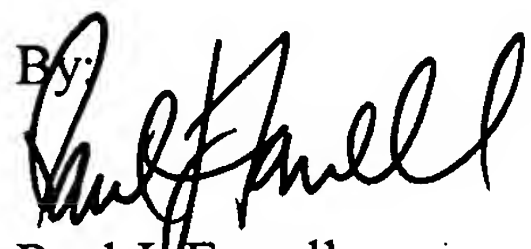
It is well settled that in order for a rejection under 35 U.S.C. §102(e) to be appropriate, it requires the disclosure in a single prior art reference of each element of the claim under consideration. *W.L. Gore & Assocs. v. Garlock*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984). Further, "anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim." *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984)(citing *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983)) (emphasis added).

The Examiner has failed to show that all of the recitations of Claims 1, 3-6, 8-22 and 24-26 are taught or suggested by Struble. Accordingly, the Examiner has failed to make out a prima facie case for an anticipation rejection.

Struble does not render independent Claims 1 and 6 unpatentable. Thus, independent Claims 1 and 6 are allowable.

Accordingly, dependent Claims 3-5, 8-22 and 24-26 are allowable because of their dependence upon independent Claims 1 and 6.

Appellants respectfully request that the Board reverses such final rejection.

By: 
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CLAIMS APPENDIX

The text of the claims involved in the appeal is:

1. (Previously Presented) A wireless communication device, comprising:

a search means;

a control means; and

a detection means,

wherein the search means searches for a peripheral device when the detection means detects that the peripheral device is likely to be utilized by the wireless communication device before a user request, and the control means determines whether the peripheral device is likely to be utilized, sets a flag when it is determined, as a result of a search, that the peripheral device is available, and thereafter awaits a user's selection of a command corresponding to the set flag.

2. (Canceled)

3. (Previously Presented) The wireless communication device according to claim 1, further comprising a user interface, wherein the user interface provides an option to utilize the peripheral device, only if a peripheral device is found.

4. (Original) The wireless communication device according to claim 3, wherein the peripheral device is not utilized merely because the detection means detects the predetermined condition.

5. (Original) The wireless communication device according to claim 4, further

comprising:

a locating means; and

a route determination means,

wherein the locating means locates a local wireless network and subsequently locates a peripheral device on the network, and the route determination means determines a route through the network from the wireless communication device to the peripheral device.

6. (Previously Presented) A method of controlling a wireless communication device, including the steps of:

searching for a peripheral device upon detection that the peripheral device is likely to be utilized by the wireless communication device, before a user request;

setting a flag according to availability of the peripheral device; and

awaiting a user's selection of a command corresponding to the set flag.

7. (Canceled)

8. (Previously Presented) The method according to claim 6, wherein the method further comprises the step of:

providing an option on a user interface of the wireless communication device to utilize the peripheral device, only if a peripheral device is found.

9. (Original) The method according to claim 8, wherein the peripheral device is not utilized merely because the predetermined condition has been detected.

10. (Original) The method according to claim 9, wherein the search for a peripheral device further comprises the steps of:

- locating a local wireless network;
- locating the peripheral device on the network; and
- determining a route through the network from the wireless communication device to the peripheral device.

11. (Original) The wireless communication device according to claim 5, wherein the wireless communication device and the peripheral device communicate using one of radio frequency and infra red.

12. (Original) The method of controlling a wireless communication device according to claim 6, wherein the wireless communication device and the peripheral device communicate using one of radio frequency and infra red.

13. (Previously Presented) The wireless communication device according to claim 11, wherein the radio frequency communication uses Bluetooth technology.

14. (Original) The wireless communication device according to claim 11, wherein the communication between the peripheral device and the wireless communication device is on a second network and a first network is used for the wireless communication device to communicate with other wireless communication devices.

15. (Original) The method of controlling a wireless communication device according to claim 12, wherein the communication between the peripheral device and the wireless communication device is on a second network and a first network is used for the wireless communication device to communicate with other wireless communication devices.

16. (Original) The wireless communication device according to claim 11, wherein the wireless communication device is one of a mobile telephone, a personal digital assistant, a laptop computer, a digital camera, and a phone and digital assistant combined (XDA).

17. (Original) The method of controlling a wireless communication device according to claim 12, wherein the wireless communication device is one of a mobile telephone, a personal digital assistant, a laptop computer, a digital camera, and a phone and digital assistant combined (XDA).

18. (Previously Presented) The wireless communication device according to claim 16, wherein the detection that a peripheral device is likely to be utilized occurs when one of a message editor is accessed on the wireless communication device, messages are stored in the memory of the wireless communication device, any current data is stored in a memory of the wireless communication device, a new calendar entry is entered on the wireless communication device, a data file is accessed on the wireless communication device, and a data file's size exceeds a preset limit on the wireless communication device.

19. (Presently Presented) The method of controlling a wireless communication device

according to claim 17, wherein the detection that a peripheral device is likely to be utilized occurs when one of a message editor is accessed on the wireless communication device, a new message is received by the wireless communication device, messages are stored in a memory of the wireless communication device, any current data is stored in the memory of the wireless communication device, a new calendar entry is entered on the wireless communication device, a data file is accessed on the wireless communication device, and a data file's size exceeds a preset limit on the wireless communication device.

20. (Original) The wireless communication device according to claim 5, wherein the peripheral device is one of a printer, display device, a data backup device, and a mobile telephone.

21. (Original) The method of controlling a wireless communication device according to claim 6, wherein the peripheral device is one of a printer, display device, a data backup device, and a mobile telephone.

22. (Original) A software program stored on a storage medium to implement the method as claimed in claim 6.

23. (Cancelled)

24. (Original) A software program stored on a storage medium to implement the method as claimed in claim 8.

25. (Original) A software program stored on a storage medium to implement the method as claimed in claim 9.

26. (Original) A software program stored on a storage medium to implement the method as claimed in claim 10.

EVIDENCE APPENDIX

There is no evidence to be presented.

RELATED PROCEEDINGS APPENDIX

There are no related proceedings.